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In The
Supreme Court of the United States

JESUS HERNANDEZ, ET AL.,

Petitioners,

v.

JESUS MESA, JR.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF PASO DEL NORTE CIVIL RIGHTS PROJECT AND SOUTHERN BORDER COMMUNITIES COALITION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTRODUCTION[1]

Far from being an isolated anomaly, the tragic killing of Sergio Hernandez is indicative of a broader, continuing problem at the United States-Mexico border. The killing of an unarmed Mexican citizen by the U.S. Border Patrol has recurred in the past and is likely to recur again in the future. *Amici* submit this brief in order to contextualize this case, and to demonstrate that it should be seen by this Court not merely as an academic exercise in constitutional doctrine applied to one set of *sui generis* facts, but rather as a case that has a real-world impact on many people's lives.

The Fifth Circuit's decision has tragic implications in the border region. The situation on the ground is murky, dangerous, and untenable for the millions of people who live in the region – roughly half of them American and half of them Mexican citizens, and many of them children who don't yet know why being on one side of the border is safer under the current regime. Border Patrol agents should not have the authority to shoot and kill a child with impunity just because that child turned out to

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[1] This brief is filed with the written consent of the parties after they received timely notice under Supreme Court Rule 37 of *amici*'s intent to file. Neither party nor a party's counsel has authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting this brief. No person or entity other than *amici* has contributed money that was intended to fund preparing or submitting this brief.

be a Mexican citizen, and just because that child stood on Mexican soil at the time he was shot. Rather than set rules for the region, the Fifth Circuit's decision only underscored the lawless environment at the border.

Specifically, *amici* wish to highlight that the Fifth Circuit's fractured decision, full of varying interpretations,[2] underscores the need for this Court's review. The case shows that by allowing the U.S. Border Patrol to exert power over the entire region without regard to whether the subject land is *de jure* Mexican or American, the current legal framework has turned the region into a no man's land, absent basic civil and human rights. Particularly on the Mexican side of the border, families live in communities shadowed not by their own government but by America's. Children go to school and play in neighborhoods that sit adjacent to the U.S. Border Patrol's fences, culverts, and guard stations. Parents work and visit family on both sides of the border. Those parents should not have to worry if today will be the day that a border guard fires his or her sidearm from the U.S. side into Mexico, injuring or killing a child, and leaving the family without recourse.

There are countless interactions between citizens and border personnel every day; most interactions pass without incident. But on occasion a Border

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[2] *Amici* agree with Petitioners' comprehensive legal analysis of the Fifth Circuit's decision.

Patrol agent makes a poor decision. Bad actors should not get a pass, never having to answer for taking the life of another simply by the happenstance of the victim's shoes standing on one side of a border while the shooter's stand on the other.

IDENTITY AND INTERESTS OF THE *AMICI CURIAE*

Amici are non-profit organizations that provide advocacy for members of the Mexican-American community in Texas and elsewhere in the border region, particularly on border and civil rights-related concerns. Through this work and their interactions with members of the border community, *amici* can provide important input about the ways in which members of the community are affected by the operations of the United States Border Patrol (the "Border Patrol").

Paso del Norte Civil Rights Project is a regional office of the Texas Civil Rights Project ("TCRP"), a non-profit public interest law organization promoting racial, social, and economic justice through education, social services, and civil rights litigation for low-to-moderate income persons least able to defend themselves. TCRP strives to foster equality, secure justice, ensure diversity, and strengthen low-to-moderate income communities in Texas. TCRP has always had a strong interest in ensuring that individuals' civil rights and liberties under the Constitution are not

abridged or modified, whether through legislation, improper enforcement, or judicial action. Protecting the Fourth and Fifth Amendment rights of individuals coming in contact with federal law enforcement entities has always been a priority of TCRP, and it has handled significant Fourth and Fifth Amendment cases since its inception.

Southern Border Communities Coalition ("SBCC") brings together sixty organizations across the border from San Diego, California, to Brownsville, Texas, and advances the common goal of promoting a safe and strong community for border residents. The coalition was formed in March 2011 as a response to a rash of Border Patrol-perpetrated violence against unarmed border residents and has focused on advocating for border enforcement policies and practices that are accountable and fair, respect human dignity and human rights, and prevent the loss of life in the region. SBCC has engaged in advocacy demanding justice for Sergio Adrian Hernandez Güereca, Anastasio Hernandez Rojas, and several other victims of violence at the hands of federal immigration enforcement officers.

STATEMENT OF THE CASE

Petitioners, survivors of Sergio Adrian Hernandez Güereca ("Hernandez"), bring this action to invoke constitutional protection from an injury that the lower courts deemed unprotected because, while caused by

actions within the United States, impacted a Mexican citizen who happened to be on the Mexican side of the border when he was injured. United States Border Patrol Agent Jesus Mesa, Jr., while standing in the United States, intentionally shot and killed the minor Hernandez, a Mexican citizen, while Hernandez stood on the Mexican side of the border. Hernandez's family sued the United States, Mesa, and Mesa's supervisors in federal district court in Texas.

The United States moved to dismiss. On agreement of Petitioners, the U.S. became the only party defendant for tort claims. The District Court dismissed those claims, holding that the United States had not waived sovereign immunity under either the Federal Tort Claims Act or the Alien Tort Statute. Petitioners then amended their complaint to add *Bivens* actions against Mesa's supervisors under the Fourth and Fifth Amendments. Shortly after that amendment, Mesa moved to dismiss the Constitutional claims against him, asserting qualified immunity and arguing that Hernandez, as an alien injured outside the United States, lacked both Fourth and Fifth Amendment protections. The District Court agreed and dismissed all claims against Mesa. The supervisors then sought dismissal of the claims against them. Petitioners voluntarily dismissed two of the supervisors, and the District Court granted summary judgment for the remaining supervisors.

Petitioners appealed. A Panel of the Fifth Circuit Court of Appeals affirmed in part and reversed in part. The Panel affirmed the dismissal of claims

against the United States and the supervisors. The Panel also affirmed the dismissal of the Fourth Amendment claims against Mesa, but reversed the dismissal of the Fifth Amendment claims. The Panel held that a noncitizen injured outside the United States as a result of arbitrary official conduct by a law enforcement officer located in the United States may invoke the protections provided by the Fifth Amendment. The Fifth Circuit granted *en banc* review.

The *en banc* Fifth Circuit affirmed the judgment of the District Court dismissing the claims (but through conflicting opinions from multiple judges). The Court of Appeals concluded that Petitioners could not assert a claim under the Fourth Amendment because Hernandez was a Mexican citizen without voluntary connection to the U.S. and was on Mexican soil when he was shot. The Circuit could not agree on whether Mesa's conduct violated the Fifth Amendment and therefore declined to answer that question. It instead held that Mesa was entitled to qualified immunity because the applicability of the Fifth Amendment was not clearly established at the time he shot Hernandez. The Fifth Circuit splintered on many issues (as discussed by Petitioners), underscoring the uncertainty surrounding these issues and the potential for varied outcomes.

Petitioners seek *certiorari* related to their claims against Mesa only on the following two discrete questions:

I. Does a formalist or functionalist analysis govern the extraterritorial application of the Fourth Amendment's prohibition on unjustified deadly force, as applied to a cross-border shooting of an unarmed Mexican citizen in an enclosed area controlled by the United States?

II. May qualified immunity be granted or denied based on facts – such as the victim's legal status – unknown to the officer at the time of the incident?

ARGUMENT

I. The Untenable Situation on the Border

This case serves as an example of the vast, unfettered power that Border Patrol agents possess over their domain on the United States-Mexico border. According to the Fifth Circuit, so long as the force is exerted from the American side of the border and strikes its victim on the Mexican side, victims have no recourse. For members of the border community, this is untenable.

Hernandez was an unarmed fifteen-year-old boy playing with friends at the border near El Paso, Texas. He was not trying to cross into the United States. He was not threatening violence, or trading in narcotics, or doing anything else untoward. He was playing a game. This game involved childhood daring, running up a steep culvert to touch the border fence

and then running back down and over to the other side. For whatever reason, Mesa felt threatened.[3] So when Hernandez was standing deep within the culvert beneath a pillar of the Paso del Norte Bridge, Mesa unholstered his sidearm, aimed, and fired. The bullet crossed the border into Mexico, struck Hernandez in the face, and killed him. For this reason, and this reason alone, if the Fifth Circuit's decision is allowed to stand, Hernandez is not entitled to Constitutional protection for Mesa's actions.

This is but an example of the untenable situation at the border. We use "example" intentionally and in the plainest sense: this tragedy was but one of many. These are sadly familiar facts to those who live along the border and to those, like the *amici*, who are aware of their everyday concerns. *Amici* submit this brief to assist the Court in understanding how the Fifth Circuit's proposed rubric more firmly establishes the current violent situation in the border region. If

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[3] An early press release from the FBI's El Paso Division claimed that Hernandez had been throwing rocks at Mesa. *Assault on Federal Officer Investigated*, FBI El Paso Press Release, June 8, 2010, *available at* https://www.fbi.gov/elpaso/press-releases/2010/ep060810.htm. Within days, however, cellphone videos and witness accounts surfaced showing that Mesa was not in any danger and Hernandez did not throw any rocks. Bob Ortega & Rob O'Dell, *Deadly border agents incident cloaked in silence*, Arizona Republic, Dec. 16, 2013, *available at* http://www.azcentral.com/news/politics/articles/20131212arizona-border-patrol-deadly-force-investigation.html; CNN, *Youth fatally shot by border agent*, June 10, 2010, *available at* http://www.cnn.com/2010/US/06/10/texas.border.patrol.shooting/.

recent history tells its tale, Hernandez will not be the last victim of the Border Patrol's unfettered control over the entire border region, including Mexico. He was most certainly not the first. Some victims were attempting to cross the border into the U.S.; others, like Hernandez, were not. None should have been subject to lethal force wielded by Border Patrol agents immune from liability. Consider the following:

→ The Border Network for Human Rights found in a 2005 study of civil rights-related conditions at the border that in the previous year alone there were more than 100 documented cases of human rights violations, 20 percent of which were attributed to the Border Patrol.[4]

→ These incidents have only increased in frequency in recent years.[5] A study by

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[4] *See* BORDER NETWORK FOR HUMAN RIGHTS, BEHIND EVERY ABUSE IS A COMMUNITY: U.S./MEXICO BORDER REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE 9 (June 2006), *available at* http://www.bnhr.org/wp-content/uploads/2010/01/BNHR-UN-Report3.pdf; BORDER NETWORK FOR HUMAN RIGHTS, THE STATUS OF HUMAN AND CIVIL RIGHTS IN THE BORDER 2004-2005 2 (Feb. 22, 2005), *available at* http://www.bnhr.org/wp-content/uploads/2010/01/BNHR-US-Mexico-Border-Report-2000-2005.doc

[5] *See* BORDER NETWORK FOR HUMAN RIGHTS, THE STATE OF HUMAN RIGHTS AT THE U.S.-MEXICO BORDER: REPORT ON THE FINDINGS OF THE 2012 ABUSE DOCUMENTATION CAMPAIGN 13-14 (June 2012), *available at* http://docs.google.com/open?id=0B3ogXZ-WnFgOZmdDc2dNeUVpX1k ("There was an increase in both the number of reported incidents and share of Border Patrol

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amicus SBCC found that Customs and Border Protection killed 36 people between 2010 and October 2014.[6]

→ Specifically in the United States-Mexico border region, from 2010 through October 2014 Border Patrol agents were responsible for at least twenty deaths in addition to the death of Hernandez.[7]

→ For example, on May 28, 2010, Anastasio Hernandez Rojas was killed when Border Patrol agents beat him and electrocuted him with a taser. Rojas was detained while attempting to cross the border. A Border Patrol agent kicked him repeatedly in the ankles, injuring him. When Rojas informed the agent that he wished to file a complaint, that agent and two others took Rojas alone to an isolated area outside the station.[8] The agents later reported that they were then required to subdue Rojas because he was resisting, but an amateur video of those

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incidents, compared to the 2009 abuse documentation campaign.").

[6] *Border Patrol Abuse Since 2010*, October 20, 2014, *available at* http://soboco.org/border-patrol-brutality-since-2010/ ("SBCC Report").

[7] *See* SBCC Report; *see also* Brian Epstein, *Crossing the Line at the Border*, NEED TO KNOW (ON PBS) (Apr. 20, 2012), *available at* http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/.

[8] *Id.* at embedded video 4:50-6:05.

events that later emerged recorded the voice of Rojas pleading for help; the eyewitness who recorded the video stated that the agents were beating Rojas while he was lying prone on the ground, handcuffed and not resisting.[9]

→ Similarly, on January 5, 2011, a Border Patrol agent shot and killed seventeen-year-old Ramses Barron Torres near the border fence near Nogales, Arizona. Although Torres's friend, who witnessed his death, stated that the Border Patrol agent's safety had not been threatened in any way, no action was taken against the agent, apparently on the sole basis of the agent's own statement that Torres had been "throwing rocks" at him.[10]

→ Likewise, on March 21, 2011, a Border Patrol agent shot and killed nineteen-year-old Carlos La Madrid near Douglas, Arizona, as he attempted to run across the border into Mexico. Unlike Hernandez, La Madrid was engaged in criminal activity at the time, as he had been driving a car containing marijuana and was attempting to flee from law enforcement.

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[9] *Id.* at 7:46-9:38.

[10] *More Accounts Emerge Following Deadly Border Shooting*, NOGALES INTERNATIONAL, Jan. 6, 2011, *available at* http://www.nogalesinternational.com/news/more-accounts-emerge-following-deadly-border-shooting/article_998a4971-2351-5f03-a8f3-c43dd1d65cfe.html.

However, La Madrid posed no threat to the Border Patrol at the time he died; indeed, all three bullets fired by the agent who killed him struck him in the back (early allegations of rock throwing were determined to be unfounded).[11]

→ On June 21, 2011, a Border Patrol agent shot and killed Alfredo Yanez Reyes near San Diego, California, as he attempted to cross the border. At the time of Reyes's death, he and another individual who was being pursued by the Border Patrol were running back toward Mexico. As with Rojas, Torres, La Madrid, and as initially with plaintiff herein, the agent who killed Reyes claimed that he had been forced to shoot because rocks had been thrown at him. However, it is unknown whether Reyes was the person who had thrown these objects, or indeed if any rocks were thrown at all.[12]

→ 36-year-old Guillermo Arévalo Pedroza was killed by Border Patrol agents on September 3, 2012. Pedroza had been picnicking at a Mexican riverfront park

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[11] Jonathon Shacat, *Waiting for Answers One Year After Border Shooting*, DOUGLAS DISPATCH, Mar. 21, 2012, *available at* http://www.douglasdispatch.com/articles/2012/04/17/news/doc4f6a4e69e4223029057743.txt.

[12] R. Stickney, *ACLU Calls for Probe in Border Shooting*, NBC SAN DIEGO, June 22, 2011, *available at* http://www.nbcsandiego.com/news/local/ACLU-Calls-for-Probe-in-Border-Shooting-124372389.html.

with his family when a Border Patrol boat appeared on the American side of the Rio Grande, apparently chasing a young man swimming across the river. People at the park allegedly threw rocks at the agents, who opened fire onto the Mexican side and killed Pedroza.[13]

→ Our final example is the tragic case of Jose Antonio Elena Rodriguez. In October 2012, in an incident strikingly similar to Hernandez's, an agent shot and killed Jose when the agent suspected the teen was part of a group throwing rocks. He was forty feet from the border when he was shot as many as seven times, with at least eight additional bullets striking an adjacent wall. An autopsy revealed the youth may have been shot in the back or even after he had already fallen to the ground.[14]

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[13] Jason Buch, *Mexican Girl Clutched Her Dying Father*, SAN ANTONIO EXPRESS-NEWS, September 8, 2012, *available at* http://www.mysanantonio.com/news/local_news/article/Father-shot-by-border-agent-while-holding-his-3848597.php; *see also* SBCC Report.

[14] Michael Marizco, *Border Patrol Shootings Going Unresolved*, October 26, 2012, *available at* http://www.fronterasdesk.org/news/2012/oct/26/border-patrol-shootings-going-unresolved/; *Autopsy Suggests Boy Shot By Border Patrol Was Already Down*, FRONTERAS, February 7, 2013, *available at* http://www.fronterasdesk.org/content/autopsy-suggests-boy-shot-border-patrol-was-already-down.

These tragic events show the unsustainable nature of the Border Patrol's behavior in the border region. While certain of the victims in these cases were attempting to cross the border others, like Rodriguez and Hernandez, were children, victims guilty of nothing but living and playing in a violent region governed by the Border Patrol. *Amici* understand that such issues as immigration and citizenship are complex. *Amici* also understand that the great pressures Border Patrol agents are under make for a sometimes dangerous environment. But that is no excuse for Constitutional protection to depend solely on the fortuity of where (on Mexican versus American soil) a person happens to be standing when he or she is shot by a U.S. official from U.S. soil.

II. Residents at the Border Live Under the Watchful Eyes and Strong Thumbs of the Border Patrol and Must not be Denied Constitutional Protections

On a map, the border between the U.S. and Mexico is a sharp black line. The land on one side of that line is one color, the land on the other side is another. The real world is not so cleanly defined. Sometimes topography makes the actual border hazy, with deserts and mountains calling into question where one land ends and another begins. Other times, however, it is the sheer level of militarization that calls into question where one country's authority gives way to another.

Along much of the U.S.-Mexico border, American policies give the Border Patrol effective control over wide swaths of territory that on a map would be Mexican soil. We must view the border functionally, not formalistically. Functionally, the border is not the stopping point of the United States' power. The area of Mexico just over the formal border has always been a gray area where the United States has exercised partial sovereignty; this has especially been the case since the current era of aggressive border enforcement began in the 1990s. Thus, on both American and Mexican soil in the region, U.S. Border Patrol agents exert control and skirmish with migrants and criminal entities, catching otherwise innocent communities in the crossfire. This is particularly so in the precise area in which Hernandez was shot: a deep cement culvert, exposed to and controlled by the Border Patrol. While the Border Patrol may on paper only control the area at the top of one side of the culvert, as this case demonstrates, the Border Patrol exerts its power over the entire area. With the local community subject to all the constraints of U.S. executive power, it makes no rational sense to deny individuals here and in similar parts of the border region coordinate Constitutional protections.

Over centuries communities have straddled the border, with strands of the family web stringing between towns on each side. Over the years, communities have built up "symbiotic urban complexes," such as San Diego-Tijuana and El Paso-Ciudad Juarez, which have become "premier centers of international

interdependence."[15] The trans-border flow of goods and people has continued, and in equal ways has increased and earned more scrutiny from border authorities. "[The North American Free Trade Agreement ("NAFTA")] radically altered the legal structure of the border between Mexico and the United States, the social geography of the borderland, and . . . the character of Mexican sovereignty."[16] Shortly after signing the agreement, the United States began powerfully shaping the border region through operations like Gatekeeper, Safeguard, Rio Grande, and Hold the Line.[17]

Through these efforts to seal the border, the United States government's control has continued to extend increasingly farther beyond it.[18] United States border enforcement policy exerts a powerful influence on life immediately over the Mexican side of the border. Law enforcement measures at the border do

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[15] OSCAR J. MARTÍNEZ, BORDER PEOPLE: LIFE AND SOCIETY IN THE U.S.-MEXICO BORDERLANDS xviii-xix (1994).

[16] María Josefina Saldaña-Portillo, *In the Shadow of NAFTA: Y tu mamá también Revisits the National Allegory of Mexican Sovereignty*, 57 AM. QUARTERLY 751, 753 (2005).

[17] *Backgrounder: Southwest Border Security Operations*, NATIONAL IMMIGRATION FORUM 5-7, *available at* http://www.immigrationforum.org/images/uploads/SouthwestBorderSecurityOperations.pdf (last updated Dec. 2010) ["*Backgrounder*"].

[18] *See* Ayelet Shachar, *The Shifting Border of Immigration Regulation*, 3 STAN. J. C.R. & C.L. 165, 177 (2007) ("[D]ecoupling of legal authority from the geographic borders of the nation-state" extends the state's power "far away from [its] own geographical boundaries").

not simply react to conditions there; they shape the "location, routes, methods, and organization" of groups and individuals they seek to exclude.[19] As of 2010, six million Mexicans and 6.3 million Americans lived in the border region, many of whom were and are subject daily to the rigors of crossings due to jobs or family on the other side of the border.[20]

In this context, communities on the border understand that though they are in Mexico, they are often closely watched by American border authorities. It is when the surveillance turns into physical interaction that danger arises. *Amici* understand that American authorities need to have a certain amount of leeway when it comes to controlling the border. The Petition raises the question of what Constitutional protections are available when authorities overstep their bounds, going beyond surveillance and defense, and exert powerful, deadly physical force across the border into Mexico. *Amici* submit that if American policy allows the Border Patrol authority in the border region – on both sides of the aforementioned clean black line – then all citizens within this *de facto* American-controlled area (both American and Mexican) deserve Fourth and Fifth Amendment protections.

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[19] PETER ANDREAS, BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE 8 (2001).

[20] *Backgrounder*, *supra*, at 2.

III. This Court's Review is Imperative

Two factors weigh in favor of this Court, at this moment, taking on this issue. The first is that while the U.S. Border Patrol has taken certain steps to examine how it exerts authority in the region, it cannot be relied upon to govern itself. The second is that the Fifth Circuit's holding largely leaves unsettled what law – and what rights – govern the border region. *Amici* need to understand the state of the law in order to properly counsel the communities they serve.

While the U.S. Border Patrol has taken certain steps to address its history of overreach in the border region, it cannot be left bereft of proper oversight. Similarly, the executive and legislative branches are not as well-positioned as the judicial branch to ensure that Constitutional rights are protected.

While the conduct of Border Patrol agents is governed by federal criminal law, this is functionally inadequate for three reasons. First, only a relatively small subset of civil rights violations is capable of supporting criminal liability. Second, criminal prosecutions depend on the exercise of prosecutorial discretion by the very branch of government that is alleged to have committed the violations. And third, criminal prosecutions offer inadequate compensation for victims or their survivors. Additionally, history has shown the border community that Border Patrol agents almost as a rule will not face charges, as was the case with Mesa. In fact, American authorities

denied Mexican prosecutors' request to extradite Mesa to face prosecution for Hernandez's murder.

From a legislative perspective, *amici* have been involved in efforts to use political pressure to get the Border Patrol to better govern itself. But it is important to clarify that the dangerous situation in which border residents find themselves is not one that a legislative agenda alone can rectify. Here, it is up to the judicial branch to guarantee the protections – and the coordinate limitations on executive power – clearly delineated in the Constitution. Border residents need this Court to confirm that where a community is under government control, the government cannot deny that community certain basic Constitutional protections.

The Border Patrol has not been without criticism from within. U.S. Customs and Border Protection (the bureau within the Department of Homeland Security governing the Border Patrol) commissioned the Police Executive Research Forum,[21] a nonprofit research and policy organization, to undertake a study examining the Border Patrol's practices. Though the study was issued in February 2013, it was not until March of 2014 that the Border Patrol relented to pressure and issued a memorandum directing agents to exercise

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[21] Police Executive Research Forum, *U.S. Customs and Border Protection Use of Force Review: Cases and Policies*, February 2013, *available at* http://soboco.org/wp-content/uploads/2014/05/PERF-Report-Use-of-Force-Review-Cases-and-Policies.pdf.

more restraint when dealing with aggressors, including rock throwers.[22] While this is certainly commendable, the Border Patrol's position is flawed for two reasons.

First, it over-emphasized dangers potentially posed by the innocent members of the border community (*amici* question when a rock thrown by a child can ever be considered adequate provocation for the use of deadly force). Second, it did nothing to rectify those already injured or killed by overaggressive Border Patrol agents. Taken as a whole, the memorandum does not remedy a key failing particular to this case and others like it: Hernandez was not throwing a rock. The child did not pose a threat. But Mesa has not, and will not, face any repercussions under this memorandum or any other prospective Border Patrol actions. It is left to this Court to find that Hernandez had Fourth and Fifth Amendment rights under the particular circumstances of the case so that Hernandez's family can have the District Court properly determine whether Mesa violated those rights.

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[22] Memorandum OBP 80/9, *Use of Safe Tactics and Techniques*, March 7, 2014, *available at* http://www.cbp.gov/sites/default/files/documents/Use%20of%20Safe%20Tactics%20and%20Techniques.pdf; *see also* Brian Bennett, *Border Patrol Restricts Agents' Use of Force*, LA TIMES, March 7, 2014, *available at* http://www.latimes.com/nation/la-na-border-shootings-20140308-story.html#ixzz2vOlvoSJI.

Further, expecting members of a uniquely powerless group – largely comprising of non-United States citizens who cannot vote – to obtain adequate protection for their civil rights through majoritarian political means is not realistic. Moreover, as with criminal prosecution, any relief that could be obtained through the political process would be purely prospective and would do nothing for the most acute victims of the civil rights offenses.

The border community requests that this Court grant this Petition in order to settle the law governing the region not only to make sure that Border Patrol agents are answerable for past violations, but also to make clear that such behavior will not be countenanced in the future.

CONCLUSION

The border region needs a clear set of rules. The residents of the border community – American and Mexican citizens alike – deserve certain basic Constitutional protections. The fortuity of where an aggressor and victim happen to find themselves with respect to an invisible and inconsequential line should not determine whether the victim's Constitutional rights are protected.

This Court should grant the Petition.

Respectfully submitted,

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